

BEFORE THE HEARINGS OFFICER  
KLAMATH COUNTY, OREGON

IN THE MATTER OF CUP 12-95 FOR  
PEGGY BIAGGI TO ESTABLISH A HOME  
NOT IN CONJUNCTION WITH FARM USE  
ON PROPERTY ZONED FOREST RANGE

ORDER

1. NATURE OF THE REQUEST:

The applicant wishes to establish a home as a use not in conjunction with farm use on a 7.9 acre property at the Southwest corner of Hildebrand Rd. and Hwy 140E, Yonna Valley, east of Dairy.

This request was heard by the Hearings Officer APRIL 7, 1995 pursuant to Ordinances 44 and 45. As the predominant use of the subject property is determined to have been agriculture, as of January 1, 1993, (Section 55.220) the application is considered under Article 54, Exclusive Farm Use, and with O.R.S. 215.243.

2. NAMES OF THOSE WHO PARTICIPATED:

The Hearings Officer in review of this application was Michael L. Brant. The applicants representative, Linda Long, appeared and offered testimony in support of the application. The Planning Department was represented by Kim Lundahl, Senior Planner. The Planning Assistant in attendance was Karen Burg.

3. LOCATION:

The property under consideration is located at the southwest corner of Hildebrand Rd. and Hwy 140E, Yonna Valley. And is located in the SE 1/4 NE 1/4 Sec. 27, T 38S R 11V. T.A. 3811-27-600.

4. RELEVANT FACTS:

The property is within the Forest Range plan designation and has an implementing zone of FR. The parent property is 7.9 acres in size and IS under farm tax deferral. Land use and lot sizes in the area are similar to that proposed by this application. Residential land use and similar lot sizes are also found within one mile of this project. Fire protection is provided by the KCFD #5, 5.0 miles away with a response time of 20 minutes.

## 5. FINDINGS:

All evidence submitted as the staff report, exhibits b-g, and offered testimony show that the approval criteria as set out in Code Articles 54, 55 and 45 has been satisfied. The Hearings Officer finds this application;

### 1. Is compatible with farm use because:

The analysis of surrounding properties and their use indicates the size of the proposed parcel and the proposed use as large lot rural-residential are compatible with the predominant adjacent land uses as the existing residential density of the area will not be markedly increased.

The applicant has demonstrated the small parcels under consideration here are not considered a commercial agricultural parcels size due to its small size.

### 2. Does not interfere seriously with accepted farming practices on adjacent lands devoted to farm use because:

The surrounding parcels are found to be developed to rural residential and commercial farm use. The proposed non-farm residence will not interfere with the on-going use as sufficient lot area and geographic boundaries provide a buffer/setback from agricultural management practices and small private pasturage may be used to support limited large animal use for the parcel.

The permit holder has proposed as a condition of this approval to file a restrictive covenant which will prohibit the permit holder and successors in interest from filing complaint concerning valid farming practices on nearby lands.

The Hearings Officer finds this will mitigate impact to farm operations.

### 3. Does not alter the stability of the overall land use pattern of the area because:

The overall land use of part of this area is found to be large lot rural residential and commercial farming. The land use pattern of the area will not be modified as the residential intensity will be marginally increased.

### 4. Is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location, and size of the tract because:

The proposed non farm parcel is substantially smaller than the 80 acre size required by HB 3661 and are therefore thought not appropriate for commercial farm use. Hearings Officer finds this non farm parcel size unsuitable for commercial agricultural use due to its small size, location, and the testimony of the applicant stating a farm income suitable to support a family cannot be generated on this property.

**6. ORDER:**

Therefore, it is ordered the request of BIAGGI for C.U.P. 12-95 is approved subject to the following conditions:

1. The applicant shall file a restrictive covenant with the County Clerk prohibiting the permit holder and their successors in interest from filing complaint concerning accepted resource management practices that may occur on nearby lands.
2. CUP 12-95 shall not be filed nor shall a building permit for a non-farm dwelling be issued under this order until the applicant provides the Planning Department with evidence that the ENTIRE property has been disqualified for valuation at true cash value for farm use and that any additional tax penalty imposed by the County Assessor has been paid.
3. The CUP granted will expire two years from the date below unless a development permit is obtained or an extension of time is approved by the Planning Director.

DATED this 7<sup>th</sup> day of APRIL, 1995

*Michael L. Brant*

Michael L. Brant, Hearings Officer

**NOTICE OF APPEAL RIGHTS**

You are hereby notified this application may be appealed to the Klamath County Board of Commissioners by filing with the Klamath County Planning Department a Notice of Appeal as set out in Section 33.004 of the Klamath County Land Development Code, together with the fee required within seven days following the mailing date of this order.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 10th day  
of April A.D., 19 95 at 2:06 o'clock P M., and duly recorded in Vol. M95  
of Deeds on Page 8874.

FEE NONE RETURN: Commissioners Journal

By *Berneltha G. Letsch* Berneltha G. Letsch, County Clerk